

in the workplace against a fellow employee. To the contrary, Emigh's conduct toward the Commonwealth employee was outside the employer/employee relationship and Fulmer's opposition was not grounded in any action by PSP toward its employees that reasonably could be perceived as being in violation of Title VII. Consequently, Title VII's anti-retaliation provision is not implicated by the allegations of the complaint and defendants' motion must be granted on this claim.

For the reasons set forth above, defendant's motion will be granted as to plaintiff's § 1983 claim against defendants SPS and Miller and all defendants in their official capacity and plaintiff's Title VII claim. The motion will be denied in all other aspects.

Date: August 27, 2009

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

cc: Samuel J. Pasquarelli, Esquire
Sherrard, German and Kelly
Two PNC Plaza, 28th Floor
620 Liberty Avenue
Pittsburgh, PA 15222

Mary Lynch Friedline, Esquire
Office of Attorney General
Fifth Floor, Manor Complex
564 Forbes Avenue
Pittsburgh , PA 15219